

DPS-351

September 28, 2006

**UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

C.A. No. **06-2253**

WARREN DURHAM, JR.

VS.

CITY AND COUNTY OF ERIE

(Western District of Pennsylvania Civil No. 04-cv-00297E)

Present: FUENTES, VAN ANTWERPEN AND CHAGARES, CIRCUIT JUDGES

Submitted is by the Clerk for possible dismissal due to a jurisdictional defect

in the above-captioned case.

Respectfully,

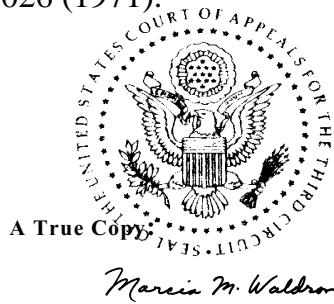
Clerk

MMW/KEK/kb/dmm

**ORDER**

**The foregoing** appeal is dismissed for lack of jurisdiction. This Court has jurisdiction of appeals from final decisions of the district courts. 28 U.S.C. § 1291. We cannot review an order that dismisses some, but not all, of the claims before the District Court unless the District Court directs the entry of a final judgment as to that order under Federal Rule of Civil Procedure 54(b). See New York Football Giants, Inc. v. Comm’r of Internal Revenue, 349 F.3d 102, 105-06 (3d Cir. 2003). The District Court’s March 13, 2006, order did not resolve the litigation as to all parties; several remaining defendants have filed summary judgment motions which are pending in the District Court. As the District Court declined to direct the entry of a final judgment under Rule 54(b), we may not review that order at this time. In addition, an order declining to certify a case for immediate review is not an appealable order. See Hilmon Co. (V.I.) Inc. v. Hyatt International, 899 F.2d 250, 252 (3d Cir. 1990) (declining Rule 54(b) certification); United States v. 687.30 Acres of Land, 451 F.2d 667, 670 (8th Cir. 1971) (declining to issue discretionary certification pursuant to 28 U.S.C. § 1292(b)), cert. denied, 405 U.S.

1026 (1971).



Marcia M. Waldron, Clerk

Dated: October 13, 2006

DMM/cc: Mr. Warren Durham, Jr.

Kemal A. Mericli, Esq.

Mark E. Mioduszewski, Esq.

By the Court

/s/ Franklin S. Van Antwerpen

Circuit Judge